IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1880 OF 1991

Thane Zilla Harijan Sevak Sangh & Ors. : Petitioners

V/s.

Mr.Tukaram Malu Tarmale & Anr. : Respondents

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Mr.V.K.Pradhan for the petitioners.

Mr.Abhay Pande i/b. Mr.M.M.Vashi for respondent no.1.

None present for respondent no.2.

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CORAM : S.A. BOBDE, J.

March 17, 2005.

P.C.:

1. Respondent no.1 was appointed as an Asstt. Teacher on 13.6.1988 on a temporary basis for a period upto 30.4.1989. Thereafter, he was similarly appointed for one more year. The second appointment order was also clear in that regard. His services were terminated by a termination notice dated 29.3.1990 with effect from the end of the academic session i.e. 30.4.1990. Respondent no.1 filed an appeal against his termination which has been allowed by the School Tribunal. The learned School Tribunal allowed the appeal on the ground that though

respondent no.1's appointment was made against sr. no.35 in the roster which was for open category candidate, respondent no.1's appointment for the academic year 1988-89 was made in the open category. Similarly, his appointment for the year 1989-90 was made against sr. no.35 in the open category and, therefore, respondent no.1's appointment was made in a clear and permanent vacancy meant for open category candidate. This finding is defective in that respondent no.1 is not an open category candidate. Even otherwise, there are clearly two appointments for a fixed tenure made for one year each at a time. In view of the law laid down by the Supreme Court in Hindustan Education Society v. SK. Kaleem SK. Gulam Nabi [(1997) 5 S.C.C. 152], respondent no.1 is not entitled to be treated as if appointed on probation.

2. In the result, the petition is allowed. The rule is made absolute. No order as to costs.

Sd/-

S.A. BOBDE, J.